

19-2564

TAX TYPE: PROPERTY TAX

TAX YEAR: 2018

DATE SIGNED: 9/09/2020

COMMISSIONERS: R. ROCKWELL, M. CRAGUN, L. WALTERS

RECUSED: J. VALENTINE,

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 19-2564</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2018</p> <p>Judge: Phan</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy COUNTY,
Attorney
RESPONDENT, Farmland Assessment Analyst, COUNTY

STATEMENT OF THE CASE

The matter before the Tax Commission is Petitioner's ("Property Owner's") appeal filed according to the provisions of Utah Code §59-2-1006, from the decision of the COUNTY Board

of Equalization (“the County”) that upheld the County Assessor’s decision issued September 26, 2018 to remove Parcel No. ##### from greenbelt under the Farmland Assessment Act and assess the rollback tax. This matter was argued in an Initial Hearing conducted via teleconference on June 23, 2020, in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature has adopted the Farmland Assessment Act and Utah Code §59-2-503 provides for the assessment of property as greenbelt under the Farmland Assessment Act as follows:

- (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
 - (a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:
 - (i) if:
 - (A) the land is devoted to agricultural use in conjunction with other eligible acreage; and
 - (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or
 - (ii) as provided under Subsection (4); and
 - (b) except as provided in Subsection (5) or (6):
 - (i) is actively devoted to agricultural use; and
 - (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

...

Utah Code Ann. §59-2-502 provides definitions applicable to the Farmland Assessment Act as follows:

- (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
 - (a) as determined under Section 59-2-503; and
 - (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area.
- (2) "Conservation easement rollback tax" means the tax imposed under Section

59-2-506.5.

- (3) "Identical legal ownership" means legal ownership held by:
 - (a) identical legal parties; or
 - (b) identical legal entities.
- (4) "Land in agricultural use" means:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
 - (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Section 59-2-102;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
 - (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.
- (5) "Other eligible acreage" means land that is:
 - (a) five or more contiguous acres;
 - (b) eligible for assessment under this part; and
 - (c)
 - (i) located in the same county as land described in Subsection 59-2-503(1)(a); or
 - (ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.
- (6) "Platted" means land in which:
 - (a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and
 - (b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604.
- (7) "Rollback tax" means the tax imposed under Section 59-2-506.
- (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:
 - (a) an owner voluntarily requests that the land be withdrawn from this part;
 - (b) the land is no longer actively devoted to agricultural use;
 - (c)
 - (i) the land has a change in ownership; and
 - (ii)
 - (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B)
 - (I) an owner applies for assessment under this part as required by Section 59-2-509; and
 - (II) the land does not meet the requirements of this part to be assessed under this part;
 - (d)
 - (i) the legal description of the land changes; and
 - (ii)
 - (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or
 - (B)
 - (I) an owner applies for assessment under this part as required by Section 59-2-509; and
 - (II) the land does not meet the requirements of this part to be assessed under this part;
 - (e) if required by the county assessor, the owner of the land:
 - (i) fails to file a new application as provided in Subsection 59-2-508(5); or
 - (ii) fails to file a signed statement as provided in Subsection 59-2-

508(5); or

- (f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

A rollback tax is imposed when land is withdrawn from greenbelt in accordance with Utah Code Ann. §59-2-506, below in pertinent part:

- (1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

...

- (3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:
 - (i) the tax paid while the land was assessed under this part; and
 - (ii) the tax that would have been paid had the property not been assessed under this part...

- (5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:
 - (i) the land is withdrawn from this part;
 - (ii) the land is subject to rollback tax under this section; and
 - (iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in Subsection (5)(a)...

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the Farmland Assessment Act is forty-five days from the Assessor's determination as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

- (1) the county assessor makes a determination under this part; or
- (2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board

DISCUSSION

On DATE, 2018, the County Assessor had removed the subject parcel from greenbelt assessment under the Farmland Assessment Act (“FAA”) based on the position that the parcel was not meeting the requirements under the FAA. The Property Owner does own other parcels of property that are adjacent to the subject, which are a total combined property of ##### acres. The subject parcel is ##### acres. The County had removed the subject parcel from the greenbelt as well as Parcel No. ##### (Parcel 53) arguing that both were part of a new residential subdivision that was just starting to be developed, the SUBDIVISION-1, and by tax year 2018, excavation of roads and preparation had removed forages and the ability for any grazing to occur on the subject parcel. Although the Property Owner had appealed the removal of the subject from greenbelt, he did not appeal the removal of Parcel 53 from greenbelt. Parcel 53 was much smaller than the subject parcel in size. Other than the subject and Parcel 53, the County had left the rest of the ##### acres in greenbelt.

It was the County’s position at the hearing that the subject parcel was not being cultivated for crops or grazed with any livestock and there was no agricultural production happening on the subject parcel. The County explained at the hearing that the decision to remove the subject parcel was made after reviewing satellite images the County had available and the County’s representative explained that they showed no sign of animals grazing on the subject parcel. The County’s photographs show a road circling around inside the parcel itself and an excavation pit with trucks or excavation equipment parked on the subject parcel.

At the hearing, the Property Owner explained that the property has been non-irrigated graze land since pioneer times and that he had owned the property for ##### years. He stated that all the parcels that comprised the ##### acres had been on greenbelt for many years. However, he was not able to establish at the hearing that there had been any grazing activity occurring on the subject parcel itself in 2017 and 2018, prior to its removal from greenbelt. The Property Owner did explain that he had fences put up and repaired around the entire ##### acres. The subject parcel was inside the fence around the ##### acres and not separated from the rest of the Property Owner’s property. There had also been a well and water trough, but that was not on the subject parcel. The Property Owner did provide some photographs of the fencing and water troughs on other parcels of his property. The photographs did not show signs of grazing on the subject parcel itself and they did not show any substantial grazing on the rest of the parcels that comprise the ##### acres. The Property Owner provided little evidence at the hearing and his own memory was unclear as to whether or not there had been ANIMALS on the subject parcel at

all in 2017. He stated that someone named NAME-1 had been running ANIMALS on the ##### acre parcel maybe up until 2016 and that he had kicked NAME-1 off because he was overgrazing the property. He said he thought NAME-1 had 30 ANIMALS on the entire parcel. The Property Owner did not submit any evidence from NAME-1 or a lease document that NAME-1 had leased the property for purposes of grazing. The Property Owner's memory was unclear in regards to 2017 and he thought that in 2018 there may have been ##### or ##### ANIMALS on the entire ##### acres.

Other than the photographs, the only documentation that the Property Owner provided were some receipts he had of ANIMALS or ANIMALS-1 purchases. There was one receipt from 2014. One receipt was dated DATE, 2018 and it was for ##### ANIMALS-1 at a total cost of \$\$\$\$\$. The purchase of ANIMALS-1 that late in the season did not support that the property was actively devoted to agricultural use for all of 2018. There was, in addition, one document that indicated a check had been issued to a BUSINESS-1 for \$\$\$\$\$ dated DATE 2017, with only the notation "ANIMALS." This might support some very limited grazing in 2017. There were several additional receipts, but they were dated in 2019 or 2020, after the subject parcel had already been removed from greenbelt. The Property Owner explained that he would have the ANIMALS processed at a meat packing facility and generally used the meat and gave the meat to his employees.

The County explained that in order to qualify as actively devoted to agricultural use under the FAA, the Property Owner would have to establish that the subject property had met the production requirements that are set out in the FAA. The County stated that for the entire #####-acre parcel, which was non irrigated graze land, the requirement was 38 Animal Unit Months (AUMs). It was the County's position that the Property Owner would need to establish that he met that for the two years preceding the tax year at issue. To meet 38 AUMs, there would have to be ##### ANIMALS grazing for a full month, or variations, which could be ##### ANIMALS for three months or ##### ANIMALS for two months. The County pointed out for the entire #####-acre parcel to qualify for greenbelt assessment under the FAA, the Property Owner would have to have established that he had met the AUM requirement and that the Property Owner had not done so in regards to the total parcel and he had not shown any grazing on the subject parcel.¹

Reviewing the facts presented by the parties and the law at issue, the County's position in this matter is appropriate. Under Utah Code Sec. 59-2-103 all tangible taxable property located in Utah is subject to property tax based on its fair market value, unless otherwise provided in the

¹ It is also not clear that the Property Owner met the requirements for the rest of the ##### acres, most of which the County had left in greenbelt.

statute. The FAA allows property meeting all of the specified criteria in that Act to be assessed on the basis of agricultural use, rather than at its fair market value. However, in order to qualify for this favorable assessment, there are a number of criteria that must be met. Allowing properties to be assessed as farmland under the greenbelt provisions shift property tax burdens to other properties.

Under Utah Code Subsection 59-2-503(1)(b)(i), in order to qualify for greenbelt assessment the property must be “actively devoted to agricultural use.” To be “actively devoted to agricultural use” it must meet specified production requirements set out at Utah Code Sec. 59-2-502 and be “land devoted to the raising of useful plants and animals with a reasonable expectation of profit.” See Utah Code Subsection 59-2-502(4). There was little provided at the hearing to indicate an expectation of profit for the Property Owner as he appears to be running a few ANIMALS on the property for his own use or to give the meat away. It was not established that he had actually been charging rent to someone else who was actively using the property for purposes of grazing ANIMALS on the property. A property may still qualify for greenbelt assessment where the owner does not farm the property himself or herself, but leases it to a lessee, if the lessee actively devotes the property to agricultural use and meets production and other requirements. However, under Utah Code Subsection 59-2-508(7) the Property Owner would have to provide a signed statement from the lessee “certifying those facts that would be necessary to meet the requirements” The Property Owner did not provide a statement from a lessee and did not establish that he had himself grazed enough ANIMALS on the property to meet the AUM requirement.

It is the Property Owner that has the burden of establishing that his property meets all of the statutory requirements to qualify for greenbelt assessment under the FAA.² The Property Owner has indicated that he was using the entire ##### acres of property as a whole and had not separated out the subject parcel. It may be possible that the subject parcel could qualify if the Property Owner was meeting the required AUMs to qualify the entire ##### acres.³ However,

² As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.” The Farmland Assessment Act is not an exemption; however, it allows for a favorable assessment based on a qualifying property’s value for agricultural use, so it operates similarly to an exemption. In addition, the courts have placed the burden of proof on the property owners in general in property tax matters. See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm’n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

³ See *County Board of Equalization of Wasatch County v. Stichting Mayflower Recreational Fonds et al.* 2000 UT 57.

the Property Owner has not established that to be the case. Considering the evidence offered, the subject parcel was not actively devoted to agricultural use and was properly removed from greenbelt and the roll back tax was assessed pursuant to Utah Code §59-2-506. The County's decision should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal of the County's decision to remove the subject property from greenbelt assessment under the Farmland Assessment Act for tax year 2018 and assess a rollback tax. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2020.

RECUSED

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner